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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,816	03/13/2001	Mohammad A. Heidaran	07078-030001	6205

22434 7590 10/27/2003

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EXAMINER
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DI NOLA BARON, LILIANA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/805,816

Applicant(s)

HEIDARAN ET AL.

Examiner

Liliana Di Nola-Baron

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 16 September 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-4, 6-11 and 20-23.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: the phrase "A method for inducing or enhancing chondrogenesis and cells" in claims 1 and 2 of the proposed amendment renders the claims indefinite, because it is not clear what cells are induced or enhanced.

Continuation of 5. does NOT place the application in condition for allowance because: Heidaran et al. discloses a matrix comprising collagen (See Abstract) and the "comprising" language of the claims in the instant application allows for a matrix containing additional materials in addition to collagen. Furthermore, Heidaran et al. teaches that a preferred collagen is Type I collagen (See col. 3, lines 38-39). Chondrogenesis, as stated by Applicant, is the development of cartilage. Cartilage is replaced by bone during ossification in the higher vertebrates. The reference teaches that a collagen matrix containing growth factors stimulates growth of normal cells (See col. 2, lines 7-10), defines repair as growth of new tissue and teaches that tissue repair can be the result of replacing lost tissue with non-identical tissues (See col. 2, lines 53-61). Thus chondrogenesis and growth of new bone are related processes and the method claimed by Applicant is inherent.

With respect to the 35 U.S.C. 102(e) rejection over Hattersley et al., the prior art discloses compositions comprising BMP-4 for the induction of cartilaginous tissue formation and specifically teaches that a composition comprising both a protein, which is useful for the induction of chondrocytes and cartilaginous tissue, and a protein useful for the induction of osteocytes and bone tissue, such as BMP-4, may be especially useful for the treatment of articular cartilage (See col. 2, lines 27-52). Thus, the reference does not teach against using BMP-4 to stimulate chondrogenesis. Additionally, the reference teaches that BMP-4 is useful for the induction and maintenance of cartilaginous tissue at a site in need of cartilage repair (See col. 2, line 53 to col. 3, line 9).

*Senos*

  
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